

ADDRESS IN THE U. S. SENATE BY SENATOR  
STROM THURMOND, (D-SC), UPON INTRODUCING  
A BILL TO CURB THE POWER OF THE COURT,  
JUNE 26, 1957.

The Tyranny of the Judiciary

Sometime ago a friend wrote to me/  
suggesting that I should introduce a bill/  
making "all legislation by the United  
States Supreme Court subject to review by  
the Congress." Perhaps my friend was  
being facetious at the time he wrote.  
Since that time the Supreme Court has  
rendered several additional decisions/  
usurping the legislative power of the  
Congress and of the States. Each succeed-  
ing decision has made my friend's sugges-  
tion/almost a matter for practical  
consideration.

Not only has the Court dealt deadly  
blows to the Constitutional principle



of States Rights/and to the law-making power of the Legislative Branch of the Federal Government, the Court has also struck at fundamental authority vested in the Executive Branch.

The time is long past due/for action by the Congress/to call a halt to this unconstitutional seizure of power by the third branch of Government.

This third branch of the Government, the Supreme Court, was conceived by the framers of the Constitution/to be a weaker branch/than the Legislative and Executive branches.

Hamilton, writing in the 78th Federalist Paper, said:

"...The Judiciary...has no influence over either the sword or the purse; no direction either of the strength or of the



wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the Executive arm/ even for the efficacy of its judgments.

"This simple view of the matter... proves incontestably, that the Judiciary is beyond comparison the weakest of the three departments of power; that it can never attack/with success/either of the other two... It equally proves...the general liberty of the people can never be endangered from that quarter; I mean so long as the Judiciary remains truly distinct from both the Legislative and the Executive..."

*Those words were by Alexander Hamilton.*

This argument by Hamilton/was on behalf of the permanent tenure of members



of the Judiciary. I doubt very seriously that he would express the same views today if he were here/and had read the decisions of the Supreme Court during recent years.

In surrounding the Federal Judiciary with safeguards to protect it/against feared usurpation of authority by the Executive and the Congress, the framers of the Constitution/intended to provide the people with greater insurance against dangers to their freedom. They did not visualize a Court/which, by disregard for the Constitution, would itself/exercise power vested by the Constitution in the States, the Congress and the Executive.

Events have proved that this branch of the Government, not subject to the direct will of the people/as are the members of the Legislative and the Executive



branches, has violated the very principle/ sought to be protected by creation of the Judiciary.

Hamilton argued for adoption of the Constitution/with the provision for permanent tenure of members of the Federal Judiciary/ because it would be necessary for the judges to acquire knowledge, through "long and laborious study," of the "strict rules and precedents, which serve to define and point out their duty in every particular case which comes before them...."

Clearly he, <sup>Hamilton,</sup> as one of the framers and as an advocate for the Constitution, understood the document to establish principles of law upon which precedents would be established, and that, once established, succeeding judges would be



expected to follow the precedents.

Indeed, such a concept of the Constitution/as fundamental law in this country/is basic to our way of life.

Nevertheless, since 1937/the Supreme Court has reversed 34 established precedents/by decisions in new cases. During 150 years under the Constitution prior to 1937, only 29 precedents of the Court had been reversed.

All of us have heard many times/the comment in 1944 of the late Justice Roberts dissenting in Smith v. Allwright, that Supreme Court decisions appeared to have taken on the attributes of restricted railroad tickets, valid only for the date of their issuance. Recent decisions of the Court/fully substantiate the opinion expressed by Justice Roberts.



When President Truman, by what was called inherent power, in 1952/directed the seizure of the steel industry, the Supreme Court was quick to declare/that the power sought to be exercised/was the lawmaking power, vested in Congress alone. I cannot understand how the Court could so easily recognize the unconstitutional action of the President, who was attempting to usurp the legislative authority, and yet/fail to recognize its own acts/of usurpation.

In 1921/the Supreme Court decided that certain laws enacted by the Congress/could not be applied to the conduct of primary elections in the States, but only 20 years later/the Court reversed itself/by approving the action of the Justice Department in going into Louisiana/to investigate an election.



In my own State, the Federal Courts in 1944 opened the Democratic primary to all persons, regardless of political affiliation, by declaring the primary to be/in effect/the real election in the State. Events of the past few years have proved this entirely wrong, the last several General Elections having been necessary/to decide a number of political races.

States in all sections of the country have felt the hand of the Supreme Court/in affairs which were clearly matters for State control.

In recent years/our great Western States have protested in vain/against Federal appropriation of water rights within their boundaries. The decision in the Federal Power Commission v. Oregon, on June 6, 1955, aroused the able Senior



Senator from Wyoming to assert that "the time has come for the Congress to reaffirm, restate, and reinforce/that long list of Federal laws/enacted for the purpose of preserving the integrity of State water law...."

On May 17, 1954, the Supreme Court handed down a decision/which declared the laws of 17 States and the District of Columbia unconstitutional/in permitting segregation of the races in the public schools. Thus, the Court struck down the 1896 decision in the Plessy v. Ferguson case/and the judicial precedents stemming from that decision. It disregarded specific evidence it had requested/and which was presented to it.

We have seen the strife resulting from this decision/and subsequent decisions



based on this new precedent. The misuse of injunctive power/employed by the Judge at Clinton, Tennessee, is an illustration of what happens/when judicial authority is abused. The County Attorney who read and explained the injunction to the students in Clinton/told them "this injunction had no limits; it applies to everyone, everywhere...in this county."

Such injunctions greatly widen the field of "judicial legislation"/which has been exercised by the Supreme Court. Every Federal Judge thus becomes a legislature unto himself, able to impose injunctions of varying scope and severity/and self-endowed with the authority to enforce such edicts.

In addition to the usurpation of power in the school cases, the Supreme Court also has held in recent decisions/



that States and local communities cannot legally maintain racially segregated public parks or transportation systems.

In *Pennsylvania v. Nelson*, involving an acknowledged Communist, the Supreme Court handed down a decision/which denies States the right to enforce laws/enacted by their legislatures/to deal with subversion or espionage, holding that this field of enforcement has been reserved to the Federal Government. But the author of the Federal law on this subject, Congressman Smith of Virginia, has declared that no such intent/was included in the act which bears his name. The Supreme Court decision in this case invalidated the laws of 42 States.

In the *Slochower* case in New York/the Court denied States and local agencies/the



right to discharge persons who invoke the Fifth Amendment in an authorized inquiry/ and refuse to answer questions about their connection with Communism.

On June 17 — only a week ago — the Supreme Court handed down several new decisions/which are bound to have far-reaching effects. I shall mention only two of the cases.

In the Watkins case, the issue was whether a witness before the House Un-American Activities Committee/could refuse to answer questions asked during an authorized investigation/when the questions did not involve self-incrimination.

The decision — which will greatly hamper investigations to ferret out Communists — stated:



"An essential premise in this situation is that the House or Senate shall have instructed the committee members/on what they are to do with the power delegated to them. It is the responsibility of the Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee/spell out that group's jurisdiction and purpose with sufficient particularity..."

Although the Court admitted that it is "not the function of this Court/to prescribe rigid rules for the Congress to follow/in drafting resolutions establishing investigating committees," it went on to declare that:

"...A person compelled to make this choice (of whether to answer a question



or not)/is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity/that the Due Process Clause requires in the expression of any element of a criminal offense..."

The heart of the matter in the Watkins case/is that the Court has provided reluctant, unfriendly, and recalcitrant witnesses/with an extra-Constitutional protection. Should this decision be permitted to stand unchallenged, it will protect criminals and Communists/against the investigations/necessary/to secure information needed/to draft legislation/for the protection of the public.

What the Court did/was to concede/it had no authority/to establish rules for



Congressional investigating committees/and  
then proceed to issue such rules.

In the Yates case, also decided  
June 17, the Court freed or ordered a re-  
trial of 14 Communist leaders/who had been  
convicted by a California jury/of advocat-  
ing the violent overthrow of the Government

Five of the Communists were freed/and  
nine given a retrial on the basis of  
extremely flimsy reasoning.

First, the Court said the Smith Act,  
under which the Communists were convicted,  
does not define what is meant by "organize"  
when it uses it with reference to  
organizing a group which advocates violent  
overthrow of the Government.

In prosecuting the case, the Government  
contended that "organize" means the  
formation of new cells or new units/and  
that the Communists were engaged in



such efforts. But the Court held to a much more narrow view/that "organize" means original creation, such as the creation of the Communist Party in this country/which had already taken place before the time of the Communists in this case.

A second question was whether the trial judge properly charged the jury/in that he failed to make a clear distinction between advocating violent overthrow of the Government as an abstract principle/and the urging or inciting to such action, even at some future time.

On this second question, the Court also agreed with the contentions of the Communists/that, in spite of their activities as leaders of the Communist Party, they were not inciting to forcible



action at present or in the future/for the violent overthrow of the Government.

So again/the Supreme Court has expanded its power without benefit of Constitutional amendment/and without legislation by the Congress authorizing an expansion. In fact, these latest decisions of the Court/ have flouted the Constitutional authority of the Congress/ by trying to set rules for its operation/and by failing to accept the clear intent of an Act approved by the Congress, about which there was no contention of lack of constitutionality.

I have made no attempt here/to review all of the instances of usurpation of power/by the Supreme Court. I have tried to make clear/the real and present need/ for action by the Congress/to halt the invasion of the Court into fields reserved by the Constitution to the States,



to the Congress, and to the Executive.

History has proved the Judicial Branch of the Government to be aggressive, instead of weak/as visualized by the framers of the Constitution. Perhaps because of not being directly subject to the will of a constituency, as are the President and the members of the Congress, the Judiciary has broken the bounds of its Constitutional limitations. The Court has gone power wild. Its decisions are wrecking the confidence of the people in the Federal Judiciary.

We cannot continue to ignore this matter of so great importance/to the people of this nation. I would not consider myself true to the oath I took to support and defend the Constitution, if I failed to seek your help in restoring



Constitutional limitations over the Federal Judiciary.

Authority to limit the power of the Court is vested in the Congress/in Section 2 of Article III of the Constitution. After listing specific exceptions, the Constitution provides that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations/as the Congress shall make."

Congress must exercise this Constitutional authority to curb the Court/or soon the Court will dominate and direct the activities of all branches of the Federal and State Governments.

I urge that we approve legislation to put the Court/under the Constitutional limitation which I have cited.



I am sending to the desk for appropriate reference/a bill which would re-establish the Constitutional authority of the States in two of the fields/which the Supreme Court has invaded without Constitutional power.

One provision of the bill would restore State authority/to enforce their own/subversion and sedition laws, not in conflict with federal statutes. The other provision of the bill/would limit the appellate jurisdiction of the federal courts/in cases relating to the public schools.

I have not attempted to provide for all the fields in which the Supreme Court/and the other appellate courts/should be regulated/in their exercise of power granted under the Constitution. The



courts need to be further regulated in other fields. I shall welcome amendments from my colleagues to include those fields too.

Mr. President, recent decisions of the Supreme Court have disrupted vital governmental activities/in all sections of the Nation. These disruptions have seriously affected the Congress, the Executive Branch, and the States.

The choice we face in this country today/is judicial limitation or judicial tyranny.

Judicial limitation will strengthen the ramparts/over which patriots have watched/through the generations since 1776.

Judicial tyranny/will destroy Constitutional government/just as surely as any other type of tyranny.



Our Federal Government was established as a government of limited powers. Only by Constitutional processes / can the limitations be removed legally. Any other method of acquiring power / is illegal and unconstitutional.

If the Supreme Court can assume power without rebuff, the complete tyranny of the Judiciary / is close at hand. Then the Federal Government will cease to be federal / and become national in nature, imposing its will upon the States and local governments of this great country.

The Supreme Court must be curbed. If it continues in the direction it is headed, we shall all become the victims of Judicial tyranny.

Mr. President, I hope that my bill will be quickly considered by the appropriate committee / and approved by the Senate